

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1451

Introduced by Senator Figueroa

February 19, 2004

An act to add Title 1.81.4 (commencing with Section 1798.98) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1451, as amended, Figueroa. Privacy guarantees: contracts.

Existing law requires a business to ensure the privacy of a customer's records and personal information, as defined. Existing law also prohibits a person or entity from publicly posting or displaying an individual's social security number. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated 3rd parties. The California Financial Information Privacy Act, requires a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information and authorizes a consumer to direct that the information not be shared with certain entities. *Existing law also establishes standards for the collection, use, and disclosure of information gathered in connection with insurance transactions.*

This bill would require a person or entity that conducts business in California and shares the personal ~~and or~~ confidential information, *as defined*, of its customers with ~~specified parties~~ *any independent*

contractors that are physically located outside of California or the United States and that are not part of, or affiliated with, the person or entity pursuant to the federal Gramm-Leach-Bliley Act to include specified provisions in its contracts and subcontracts guaranteeing, among other things, the right to informational privacy under existing law *and consenting to jurisdiction in California courts, as specified.* The bill would also require these persons and entities to clearly disclose to all California customers, prior to sharing the customer's information, that the customer's personal or confidential information will be entrusted to those parties located outside of California or the United States *and would impose strict liability on these persons and entities in certain circumstances.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 1.81.4 (commencing with Section
2 1798.98) is added to Part 4 of Division 3 of the Civil Code, to read:

3

4 TITLE 1.81.4. PRIVACY GUARANTEES

5

6 1798.98. (a) *For purposes of this section, "personal or*
7 *confidential information" means an individual's social security*
8 *number, medical information as defined in subdivision (g) of*
9 *Section 56.05, personally identifiable financial information as*
10 *defined in subdivision (b) of Section 4052 of the Financial Code,*
11 *personal information as defined in subdivision (s) of Section*
12 *791.02 of the Insurance Code, or a tax return.*

13 (b) Every person or entity that conducts business in California
14 and shares the personal or confidential information of ~~any~~
15 ~~customer with any person, office, contractor, subcontractor, or~~
16 ~~other entity~~ *any California resident with any independent*
17 *contractor* that is not part of, or affiliated with, the person or entity
18 or its corporate structure as provided in the federal
19 Gramm-Leach-Bliley Act (Public Law 106-102), and is
20 physically located outside California, or outside of the United
21 States of America, shall include ~~clear~~ *the following* provisions in
22 its contracts ~~and subcontracts guaranteeing the following:~~

~~(1) That every person, office, contractor, subcontractor, or other entity, as well as every employee or independent contractor or other person who has access to the personal or confidential information of California customers shall treat that information :~~

~~(1) That the independent contractor shall treat the personal or confidential information with the utmost care and respect for its personal or confidential nature, shall not disclose that information, and shall use the personal or confidential information solely for the performance of any duties or obligations set out in the contract.~~

~~(2) That the provisions of federal and California laws protecting an individual's right to informational privacy shall be applicable to the personal and confidential information of California customers, irrespective of where any violation of those protections may occur, including, but not limited to, all of the following:~~

~~(A) Section 1 of Article I of the California Constitution.~~

~~(B) Part 2.6 (commencing with Section 56) of Division 1.~~

~~(C) Title 1.81 (commencing with Section 1798.80), Title 1.81.1 (commencing with Section 1798.85), Title 1.81.3 (commencing with Section 1798.92), Title 1.82 (commencing with Section 1799).~~

~~(D) Division 1.2 (commencing with Section 4050) of the Financial Code.~~

~~(E) Any regulations implementing any statutory or other provision protecting the informational privacy of California citizens.~~

~~(3) That any person or entity of whatever kind with access to the personal or confidential information about a California customer shall consent to jurisdiction in the courts of California for any violation of federal or California law protecting informational privacy with respect to California customers.~~

~~(4) That every contract and subcontract of whatever kind shall specify that any party to the contract or transaction whose actions are a proximate cause of the violation of any California citizen's privacy or confidentiality shall be liable for their conduct in California's courts.~~

~~(5) That the primary contractor shall be strictly liable for any action of its contractors or subcontractors, subsidiaries, affiliates, employees or independent contractors that violate the confidentiality provisions of federal or California law.~~

1 ~~(b)~~

2 (2) That the independent contractor shall comply with all
3 applicable provisions of the following:

4 (A) Part 2.6 (commencing with Section 56) of Division 1.

5 (B) Title 1.81.1 (commencing with Section 1798.85) and Title
6 1.82 (commencing with Section 1799).

7 (C) Division 1.2 (commencing with Section 4050) of the
8 Financial Code.

9 (D) Article 6.6 (commencing with Section 791) of Chapter 1 of
10 Part 2 of Division 1 of the Insurance Code.

11 (3) That the independent contractor consents to jurisdiction in
12 the courts of California and agrees that all actions or proceedings
13 arising in connection with the contract and related to an unlawful
14 disclosure or use of personal or confidential information,
15 including any action brought by a third party beneficiary to the
16 contract, shall be tried and litigated exclusively in the State of
17 California.

18 (4) That any California resident whose personal or
19 confidential information is disclosed in violation of the contract
20 shall be deemed a third party beneficiary of the contract.

21 (5) That any subsequent contract entered into by an
22 independent contractor involving the sharing of personal or
23 confidential information received under the contract shall contain
24 all of the provisions required by this subdivision.

25 (c) Every person or entity that conducts business in California
26 and shares the personal or confidential information of any
27 California resident with any independent contractor that is not
28 part of, or affiliated with, the person or entity or its corporate
29 structure as provided in the federal Gramm-Leach-Bliley Act
30 (Public Law 106-102), and is physically located outside
31 California, or outside the United States of America, shall be
32 strictly liable for any action by that independent contractor that
33 violates any of the laws set forth in paragraph (2) of subdivision
34 (b), if that violation involves the personal or confidential
35 information that has been shared by the person or entity with its
36 independent contractor.

37 (d) Every person or entity that conducts business in California
38 and shares the personal or confidential information of any of its
39 ~~customers with any person, office, contractor, subcontractor, or~~
40 ~~other entity~~ customers with any independent contractor that is

1 physically located outside California, or outside of the United
2 States of America, shall clearly disclose to all California
3 customers prior to sharing that customer's information that the
4 customer's personal or confidential information will be entrusted
5 to persons outside of California or outside of the United States of
6 America. The disclosure may make reference to the protections set
7 out in subdivision ~~(a)~~ (b).

8 *(e) Nothing in this section shall prohibit contract provisions*
9 *that provide greater protections to personal or confidential*
10 *information than those provided by the laws set forth in paragraph*
11 *(2) of subdivision (b).*

